

§ 222.24

50 CFR Ch. II (10–1–98 Edition)

(6) If a live animal is to be taken, transported, or held in captivity—the applicant's qualifications for the proper care and maintenance of the species and the adequacy of his facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant's project or program terminates;

(10) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application;

(12) Opinions or views of scientists or other persons or organizations knowledgeable of the species which is the subject of the application or of other matters germane to the application; and

(d) Permits applied for under this section shall contain terms and conditions as the Director may deem appropriate, including:

(1) The number and kind of species which are covered;

(2) The location and manner of taking;

(3) Port of entry or export;

(4) The methods of transportation, care and maintenance to be used with live species;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the species, its progeny or the species product;

(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is

current and chargeable for the cost of furnishing the service.

[39 FR 41375, Nov. 27, 1974]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 222.23, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 222.24 Procedures for issuance of permits.

(a) Whenever application for a permit is received by the Director which the Director deems sufficient, he shall, as soon as practicable, publish a notice thereof in the FEDERAL REGISTER. Information received by the Director as a part of the application shall be available to the public as a matter of public record at every stage of the proceeding. An interested party may within 30 days after the date of publication of such notice, submit to the Director his written data, views, or arguments with respect to the taking, importation, or other action proposed in the application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the Director determines that a hearing would otherwise be advisable, the Director may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) Except as provided in subpart D of 15 CFR part 904, as soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Director

shall issue or deny issuance of the permit. Notice of the decision of the Director shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) If a permit is issued, the Director shall publish notice thereof in the FEDERAL REGISTER, including his finding that (1) such permit was applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973. The requirements of this paragraph pertain solely to the permits issued under § 222.23.

(e) The Director may waive the thirty-day period in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Director in the FEDERAL REGISTER within ten days following the issuance of the certificate of exemption or permit.

[39 FR 41375, Nov. 27, 1974, as amended at 42 FR 28139, June 2, 1977; 49 FR 1042, Jan. 6, 1984; 55 FR 20607, May 18, 1990]

§ 222.25 Applications for modification of permit by permittee.

Where circumstances have changed so that an applicant or permittee desires to have any term or condition of his application or permit modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in §§ 222.22(c) and 222.23(c).

[39 FR 41375, Nov. 27, 1974, as amended at 55 FR 20607, May 18, 1990]

§ 222.26 Amendment of permits by NMFS.

All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the

date of notification, unless otherwise specified.

[39 FR 41375, Nov. 27, 1974]

§ 222.27 Procedures for suspension, revocation, or modification of permits.

Any violation of the applicable provisions of parts 217 through 222 of this chapter, or of the Act, or of a condition of the permit may subject the certificate holder to the following:

(a) The penalties provided in the Act; and

(b) Suspension, revocation, or modification of the permit, as provided in subpart D of 15 CFR part 904.

[49 FR 1043, Jan. 6, 1984, as amended at 55 FR 20607, May 18, 1990]

§ 222.28 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking, importation, exportation, or other act;

(2) The period of any transit of such person or agent which is incident to such taking, importation, exportation, or other act; and

(3) Any other time while any animal under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the tank, container, package, enclosure, or other means of containment, in which the animal is placed for purposes of storage, transit, supervision, or care.

[39 FR 41375, Nov. 27, 1974]

Subpart D—Special Prohibitions

§ 222.31 Approaching humpback whales in Hawaii.

Except as provided in subpart C (Endangered Fish or Wildlife Permits) of this part it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of the Islands of Hawaii, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):